April 20, 2023

SMD# 23-003 RE: Opportunities to Test Transition-Related Strategies to Support Community Reentry and Improve Care Transitions for Individuals Who Are Incarcerated

Executive Summary

On April 17, the Centers for Medicare and Medicaid Services (CMS) released State Medicaid Director Letter (SMDL) #23-003 to provide guidance to state Medicaid agencies on designing 1115 Demonstration projects to enhance transitions for incarcerated individuals eligible for Medicaid who are reentering the community. As defined in Section 5032 of The Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT Act), the Department of Health and Human Services was mandated to convene a stakeholder group to identify best practices and issue a report, which shaped this demonstration opportunity. The flexibility, referred to as the Reentry Section 1115 Demonstration Opportunity, allows states to provide a package of pre-release services for up to 90 days before an individual's expected community reentry date. The guidance outlines specific elements to include in applications and requirements for implementation, monitoring, and evaluation. States may submit a new application or amend an existing section 1115 demonstration to authorize expenditure authority under the Reentry Section 1115 Demonstration Opportunity.

Reentry Section 1115 Demonstration Opportunity

The purpose of CMS' SMDL is to support states' proposals to advance the goals of Medicaid through coverage for certain Medicaid services to incarcerated individuals reentering the community. The guidance specifies that this approach is not intended to shift current carceral health care costs to the Medicaid program, but rather improve transitions by providing coverage for ce rtain services. Further guidance clarifies that states may receive matching funds if they agree to reinvest the total amount of new federal matching funds for services under the demonstration into activities and/or initiatives that promote access and improve quality for persons incarcerated or recently released, or for health-related social services that may help deter individuals from being involved in the criminal justice system. This approach would require states to agree to develop and submit a reinvestment plan during the post-approval Demonstration period.

Demonstration Goals

- Increase coverage, continuity of coverage, and appropriate service uptake.
- Improve access to services.
- Improve coordination and communication.
- Increase additional investments in health care and related services.
- Improve connections between carceral settings and community services.
- Reduce all-cause deaths.
- Reduce the number of avoidable emergency department visits and inpatient hospitalizations.

Elements/Provisions

CMS identifies specific elements that should be included in Reentry Section 1115 Demonstration Opportunity ("Demonstration") designs.

Quality and Health Equity	Proposals should include approaches to improve the quality of coverage and care for all Demonstration beneficiaries to reduce disparities and improve health equity. CMS encourages states to involve individuals who were formerly incarcerated to inform Demonstration design and implementation.
Breadth of Carceral Settings	The types of carceral settings included are at the state's discretion. States may include federal prisoners in the Demonstration to assist with the submission of Medicaid applications. However, CMS expects states to refrain from including federal prisons where Demonstration-covered pre-release services are provided, given the responsibility of the federal Bureau of Prisons to provide and pay for the health care of prisoners.
Eligible Individuals	States are encouraged to propose a broad definition of populations included in the Demonstration that includes eligible, soon-to-be released individuals.
Medicaid Eligibility and Enrollment	CMS does not intend to approve a Demonstration application unless the state suspends, rather than terminates, individuals' Medicaid eligibility for the duration of their incarceration. Recognizing some states do not currently use a suspension approach and will need adequate time to modify systems to account for this shift, CMS is providing a glide path of up to two years from approval to make such changes.
Scope of Health Care Services	States are expected to include the minimum benefits outlined below and may propose to cover additional services.

Minimum Benefits

CMS does not expect to approve a state's Demonstration proposal unless the pre-release benefit package includes:

Case management to assess and address physical and behavioral health needs, and health-related social needs (HRSN)	• Comprehensive assessment and periodic reassessment of individual needs, to determine the need for any medical, educational, social, and/or other services. • Development (and regular revision) of a specific care plan based on the information collected through the assessment. • Referral and related activities (such as scheduling appointments) to help the individual acquire needed supportive and stabilizing services, including activities that help link the individual with medical, social, and educational providers or other programs and services. • Monitoring and follow-up activities, including activities and contacts to ensure that the care plan is effectively implemented and adequately addresses the needs of the eligible individual.

Medication assisted treatment (MAT) services	MAT includes medication in tandem with counseling and/or behavioral therapies, as appropriate and individually determined. This service should be made available to beneficiaries with all types of Substance Use Disorder (SUD) as clinically appropriate, not just Opioid Use Disorder (OUD).
30-day supply of all prescription medications provided to the beneficiary immediately upon release	States may choose to cover the medications through Section 1115 expenditure authority prior to the individual formally being released from incarceration or the individual may receive the medications under their state plan Medicaid benefit package as they are leaving the carceral facility.

Flexibility for Additional Physical and Behavioral Health Services

In addition to the minimum benefits required above, the Demonstration will allow state Medicaid agencies to set a common benefit package across carceral facilities that will best accomplish the goal of improving care transitions for incarcerated individuals. Additional services that can be requested for coverage through the Demonstration include family planning services and supplies, behavioral health, or preventative services, including those services provided by peer supporters and community health workers with lived experience, and treatment for Hepatitis C. CMS is willing to allow states to use 1115 authority to provide medical services, equipment, and appliances prior to the individual being formally released so that they can reenter their communities with needed health care items such as walkers and diabetic supplies. CMS also highlights that reentering individuals may benefit from integrated provider delivery models, such as health homes.

States should base additional services on the needs of the carceral populations they will serve since such services would be coverable if not for the inmate payment exclusion. States must include justification in their section 1115 demonstration applications for how such services would promote the objectives of the Medicaid program and facilitate meeting the Demonstration goals, consistent with section 5032 of the SUPPORT Act.

Provision of Pre-Release Services

States may cover pre-release services delivered in person, via telehealth, or a combination of the two. Medicaid agencies must work with carceral facilities to ensure access to services, including access to technology and privacy needed for telehealth services. To the extent states rely on carceral health care providers for services under the Demonstration, states must ensure these providers comply with Medicaid provider participation policies. The state's Demonstration evaluation process must include an analysis of pre-release carceral and community health care providers and identify any challenges these providers encounter.

While the SUPPORT Act permits CMS to approve demonstrations providing pre-release services beginning no earlier than 30 days prior to the expected release date, CMS has discretionary authority to approve demonstrations for certain pre-release services up to 90 days prior to the expected release date, provided they "have a demonstration purpose and related experimental hypotheses that go beyond improving care transitions for soon-to-be released individuals." In other words, states

wishing to cover up to 90 days of pre-release services must include in their demonstrations additional hypotheses that can be tested through the course of the Demonstration.

Administrative Information Technology

Information technology (IT) system expenditures related to the implementation of an approved Demonstration may be eligible for enhanced Federal financial participation (FFP), including a 90/10 enhanced match for design, development, and implementation and a 75/25 enhanced match for ongoing operations. Eligible expenditures may include the following: establishing new data systems, improving data integration, developing software applications to facilitate interagency communication, adding data fields or data matching logic to existing eligibility and enrollment systems, and implementing system accessibility changes.

CMS encourages states to consider opportunities to improve electronic health records ("EHR") used by carceral facilities, so they meet the standards and capabilities of systems used by state Medicaid agencies. CMS recommends states consider:

- Recommending or requiring participating carceral health care providers use an EHR certified by the Office of the National Coordinator for Health Information Technology's (ONC) Health IT Certification Program.
- Setting minimum standards related to carceral health care providers' care coordination capabilities.
- Recommending or requiring carceral health care providers connect with national networks, such as the CDC Immunization Gateway or eHealth Exchange, to facilitate care coordination.

Transitional, Non-Service Expenditures

CMS will consider state requests for FFP to support transitional expenses, such as development of new business processes, IT system changes, hiring and training new staff, and stakeholder outreach and education. States requesting such funds must show how these transitional expenses result from their Demonstration implementation plan and were not previously planned expenses.

Data-Sharing, Confidentiality, Privacy, and Security Considerations

CMS recognizes data sharing can be a barrier to coordinating care for the justice-involved population, with data residing in disparate systems operated by agencies that do not always collaborate. CMS encourages states to engage with correctional agencies early in the waiver development process to put in place any data sharing agreements needed.

Reinvestment Plan

CMS does not expect to approve state proposals to receive FFP for carceral health care services currently funded by state or local dollars unless the state agrees to reinvest that FFP into initiatives that increase access to or quality of care for individuals who are incarcerated, or for health-related social services that may help divert individuals from criminal justice involvement. States proposals should include a reinvestment plan outlining how they will reinvest the funds. The reinvestment plan should describe the

activities and/or initiatives the state has selected to invest in and a timeline for implementation. The reinvestment plan should align with the goals of the Demonstration.

The state's share of expenditures for new, enhanced or expanded pre-release services approved under the Demonstration can be considered an allowable reinvestment. CMS will not approve reinvestment plans to build carceral facilities or pay for facility improvements, other than those that will directly meet the health care needs of individuals who are incarcerated.

Demonstration Milestones

CMS requires states to commit in their Demonstration proposals to making significant improvements related to five milestones and numerous associated actions linked to the Demonstration goals. These include:

Increasing coverage and ensuring continuity of coverage for individuals who are incarcerated	• Implement a state policy for a Medicaid suspension strategy during incarceration. • Ensure that any Medicaid-eligible person who is incarcerated at a participating facility but not yet enrolled is afforded the opportunity to apply for Medicaid. • Ensure that all individuals at a participating facility who were enrolled in Medicaid prior to their incarceration are provided with assistance with the Medicaid renewal or redetermination process requirements. • Implement a state requirement to ensure that all Medicaid-enrolled individuals who are incarcerated at a participating facility have Medicaid enrollment documentation and information on how to use their coverage provided to them upon release. • Establish processes to allow and assist all individuals who are incarcerated at a participating facility to access and complete a Medicaid application.
Covering and ensuring access to the minimum set of pre-release services for individuals who are incarcerated to improve care transitions upon return to the community	• Implement state processes to identify individuals who are incarcerated who qualify for pre-release services. • Cover and ensure access to the minimum short-term, pre-release benefit package. The state should describe the Medicaid benefit category or authority for each proposed service. • Ensure case managers have knowledge of community-based providers in communities where individuals will be returning upon release.
Promoting continuity of care	• Require Demonstration beneficiaries receive a person-centered care plan that addresses physical and behavioral health needs, as well as HRSN and LTSS. • Provide or facilitate timely access to any post-release health care items and services, including fills or refills of prescribed medications and medical supplies, equipment, appliances or additional exams, laboratory tests, diagnostic, family planning, or other services needed. • Ensure, if applicable, that managed care plan contracts reflect clear requirements and processes for transfer of the member's relevant

	health information for purposes of continuity of coverage and care upon release into the community. • Ensure case managers coordinate with providers of pre-release services and community-based providers. Require case managers to facilitate connections to community-based providers pre-release for timely access to services. CMS expects warm hand-offs to a post-release case manager with follow-up.
Connecting to services available post-release to meet the needs of the reentering population	• Develop state systems to monitor Demonstration beneficiaries and their person-centered care plans to ensure that post-release services are delivered within an appropriate timeframe, including a scheduled contact between the beneficiary and the case managers that occurs within one to two days post-release and a second appointment that occurs within one week of release to ensure continuity of care and seamless transition to monitor progress and care plan implementation. • Monitor ongoing case management to ensure successful transitions. • Ensure that Demonstration beneficiaries are connected to other services needed to address LTSS and HRSN. • Monitor and ensure that case managers have the necessary time needed to respond effectively to Demonstration beneficiaries.
Ensuring cross-system collaboration	• Establish an assessment outlining how the state's Medicaid agency and participating correctional system/s will confirm they are ready to ensure the provision of pre-release services to Demonstration beneficiaries. • Develop a plan for organizational level engagement, coordination, and communication between the corrections systems, community supervision entities, health care providers and provider organizations, state Medicaid agencies, and supported employment and supported housing agencies or organizations. • Develop strategies to improve awareness and education about Medicaid coverage and health care access among stakeholders. • Develop systems or establish processes to monitor the health care needs and HRSN of individuals who are exiting carceral settings. This includes identifying any anticipated data challenges and potential solutions, articulating the details of the data exchanges, and executing related data-sharing agreements to facilitate monitoring of the Demonstration, as described below.

Implementation, Monitoring, and Evaluation

CMS expects a state with an approved Demonstration to submit an implementation plan, a monitoring protocol, quarterly/annual monitoring reports, a mid-point assessment report, an evaluation design, and interim/summative evaluation reports, consistent with typical expectations and requirements for a Section 1115 Demonstration project.

Implementation Plan

States with an approved Demonstration are required to develop an implementation plan per CMS guidance that describes activities and associated timelines for achieving the Demonstration milestones. For each milestone, a state will be expected to identify key implementation challenges and specific plans to address these challenges. Additionally, a state should provide information on how it will improve health care quality for all Demonstration beneficiaries essentially reducing disparities and improving health equity. The state must also describe its approach to ensure immediate availability of coverage and payment for full benefits upon beneficiary release to the community. Furthermore, the implementation plan must also include a reinvestment plan that aligns with the goals of the Demonstration specified in section 5032(b) of the SUPPORT Act.

A state may submit the implementation plan as part of its application, during the approval process with CMS, or as a post-approval protocol. FFP for services provided during individuals' stays in carceral settings will be contingent upon CMS approval of the state's implementation plan regardless of whether the implementation plan is submitted as part of a state's application or as a post-approval protocol. The state will be expected to include information in its Demonstration monitoring reports that details the state's progress toward meeting the milestones, specifically in the context of the timeframes specified in the state's implementation plan.

Monitoring Protocol and Reporting

States must include information in quarterly and annual monitoring reports detailing progress toward meeting the milestones for the Demonstration. CMS expects such metrics to include administration of screenings to identify individuals eligible for pre-release services, participating pre-release services providers, utilization of applicable pre-release and post-release services (e.g., primary, behavioral, MOUD, case management), provision of health or social service referral pre-release, beneficiaries with established care plans at release, and take up of data system enhancements among participating carceral settings.

States will be also expected to report quality of care and health outcomes metrics known to be important for closing key quality and health equity gaps in Medicaid/CHIP (e.g., the National Quality Forum (NQF) "disparities-sensitive" measures) and prioritizing key outcome measures and their clinical and non-clinical (i.e., social) drivers of health.

CMS will provide guidance to each participating state to develop a monitoring protocol that will describe the plan for how and what the state will report in quarterly and annual monitoring reports. A timeframe for submitting the monitoring protocol and quarterly and annual monitoring reports will be included in the STCs of each approved Demonstration.

Mid-point Assessment

The mid-point assessment by an independent assessor describing the state's progress in meeting the milestones and performance measure targets will occur between Demonstration years two and three. A state at risk of not meeting the milestones will be expected to describe the mid-course corrections it will undertake, including any modifications to its Demonstration implementation. The mid-point assessment

should indicate if the state is on track as per its implementation plan, any challenges the state is encountering, and how the state is planning to overcome those challenges and apply lessons learned. In the event a state is not making sufficient progress toward achieving the milestones based on performance measures, FFP for demonstration expenditures may be withheld.

Evaluation Design and Reports

States must conduct independent and robust interim and summative evaluations. A state will develop an evaluation design, with technical assistance from CMS, to be submitted within 180 days of the Demonstration approval. The evaluation design should include detailed analytic plans and data collection and reporting details. The evaluation design should be mixed methods and might include how the state will test whether the Demonstration improved care transitions for beneficiaries, including whether and how the Demonstration improves coverage and quality of care. Outcomes of interest could include measurement of cross-system communication and collaboration, connections between carceral settings and community services, provision of preventive and routine physical and behavioral health care, and avoidable ED visits and inpatient hospitalizations, as well as all-cause deaths.

The state should also conduct a comprehensive cost analysis to support developing estimates of implementing the Demonstration, including covering associated services. If the state is testing services beyond the minimum benefit package and/or providing coverage for a period over 30 days and up to 90 days immediately prior to a beneficiary's expected release date, the state should incorporate additional hypotheses to describe those tests.

CMS highly emphasizes that the state conducts well-designed provider, carceral facility, and/or beneficiary surveys and/or interviews to assess key implementation challenges for case managers, providers, and carceral facilities, as well as to directly explore beneficiary understanding of and experience with transitioning out of the carceral setting. The state will be expected to collect data to support analyses stratified by key subpopulations of interest (e.g., by sex, age, race/ethnicity, primary language, disability status, geography, and sexual orientation and gender identity). The stratified data analyses will provide an understanding of existing disparities in access to and quality of care and health outcomes and help inform how the Demonstration's various policies might support reducing such disparities. Additionally, the state and its evaluator should create comparison groups in its evaluation design if it plans to phase in implementation across different carceral facilities.

The state will be required to submit the interim evaluation report one year before expiration of the Demonstration or when the state submits a proposal to extend the Demonstration. The state will be required to submit the summative evaluation report within eighteen months after the Demonstration period ends.

Budget Neutrality

The Demonstrations must be "budget neutral," meaning the federal costs of the state's Medicaid program with the Demonstration ("with waiver" (WW) costs) cannot exceed what the federal government's Medicaid costs in that state likely would have been without the Demonstration (the "without waiver" (WOW) costs).

Submission Process

States can submit a new 1115 demonstration application or amend an existing 1115 demonstration to seek authority for the Demonstration. State proposals should include a description of the carceral settings, eligible individuals, pre-release services to be included and the timeframe for delivery of pre-release services. States should also identify key implementation challenges and, at a high level, how they intend to address these challenges for each milestone with further elaboration in the implementation plan. States should follow the usual process for submitting a section 1115 demonstration proposal in accordance with the requirements outlined in 42 CFR § 431.412 for new demonstrations or in accordance with the state's STCs for proposals to amend an existing demonstration to add authorities for the Demonstration.